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Counsel for Creditors Kevin Kelly and Edel Kelly

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Index: Case No. 18-74545 (AST)

NEW YORK NETWORK MANAGEMENT, L.L.C.
dba NYNM,

Chapter 11

Debtor.

**NOTICE OF REMOVAL OF LAWSUITS
PENDING IN SUPREME COURT OF
NEW YORK, KINGS COUNTY TO
EDNY BANKRUPTCY COURT**

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NEW YORK NETWORK MANAGEMENT LLC

Index: 522203/2016
Action No. 1

Plaintiff,

-against-

KEVIN KELLY and AUCIELLO LAW GROUP, PC

Defendants.

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KEVIN KELLY and EDEL KELLY

Index: 522255/2016
Action No. 2

Plaintiff,

-against-

NEW YORK NETWORK MANAGEMENT LLC and
ELIZABETH KELLY,

Defendants.

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NOTICE OF REMOVAL PURSUANT TO 28 USC § 1452 and FRBP 9027

PLEASE TAKE NOTICE, that pursuant to 28 USC § 1452 and FBRP 9027, the undersigned, on behalf of Kevin Kelly and Edel Kelly hereby removes the action *New York Network Management LLC v. Kevin Kelly and Auciello Law Group, PC* Kings County Supreme Court Index No. 522203/2016 (“Action 1”) and the action *Kevin Kelly and Edel Kelly v. New York Network Management LLC and Elizabeth Kelly* Kings County Supreme Court Index No. 522255/2016 (“Action 2”) (collectively, “the Actions”) to the United States Bankruptcy Court for the Eastern District of New York, and hereby gives gives notice of such removal to each of the following:

New York Supreme Court, Kings County
360 Adams Street, Part 70
Brooklyn, NY 11201

Law Firm of Agulnick & Gogel, LLC
Counsel for New York Network Management LLC
and Elizabeth Kelly
8 Bond Street, Suite 303
Great Neck, NY 11021

Removal of the Actions is based upon the following facts:

1. On December 14, 2016, New York Network Management LLC (“NYNM LLC”) filed Action 1 against Kevin Kelly and Auciello Law Group, PC, entitled *New York Network Management LLC v. Kevin Kelly and Auciello Law Group*, in the Supreme Court of New York, Kings County.
2. In Action 1, NYNM LLC asserts causes of action against Kevin Kelly for Tortious Interference with Business Relations, Defamation, and Injunctive Relief as more fully set forth in the Action 1 Complaint [Exhibit “A”]. Action 1 was discontinued as against Defendant Auciello Law Group, P.C. on February 22, 2017 [Exhibit “E”].
3. Also on December 14, 2016, Kevin Kelly filed a Summons with Notice in Action 2 against NYNM LLC and Elizabeth Kelly entitled *Kevin Kelly v. New York Network Management LLC and Elizabeth Kelly* in the Supreme Court of New York, Kings County. A Complaint was filed on February 10, 2017 adding Edel Kelly as a Plaintiff [Exhibit “B”].

4. In Action 2, Kevin Kelly and Edel Kelly assert causes of action as against NYNM LLC and Elizabeth Kelly for Breach of Contract, Conversion, and Breach of Fiduciary Duty and Duty of Good Faith and Fair Dealing, Quantum Meruit, Common Law Dissolution of LLC, and Injunctive Relief, as set forth in the Action 2 Complaint. The Action 2 Complaint was amended on February 1, 2018 to assert a cause of action as against NYNM LLC and Elizabeth Kelly for Retaliatory Personnel Action pursuant to NY Labor Law § 740 [Exhibit “B”].

5. On October 30, 2017, the Court ordered the two Actions to be consolidated for the purposes of a joint trial [Exhibit “I”]

6. The Actions concern the rights of Kevin Kelly and Edel Kelly as members of NYNM LLC to profit distributions and distributions concerning the recent sale of NYNM LLC to Constellation Technologies, Inc. Once the sale became imminent, Elizabeth Kelly, the majority member, attempted to force out all four minority members in exchange for buy-outs of approximately one quarter of the value of their shares under the sale.

7. On July 5, 2018, NYNM LLC filed a voluntary petition for bankruptcy in the Eastern District of New York Bankruptcy Court under Chapter 11 of the United States Bankruptcy Code, which is currently pending. The NYNM LLC bankruptcy is currently consolidated with the bankruptcy of Constellation Healthcare Technologies, Inc. and its subsidiary, NYNM Acquisition, LLC. NYNM’s bankruptcy petition stayed the causes of action in Action 2 as against NYNM LLC.

8. On August 20, 2018, an Order of Wavny Toussaint J.S.C. stayed all causes of action in Action 1 and Action 2 pending further Order of this Court. [Exhibit “L”].

9. Kevin Kelly and Edel Kelly are major claim holders in the NYNM LLC bankruptcy estate. The determination of the Kellys’ claims will significantly effect the administration of the estate. Therefore, the Actions constitute core proceedings within the meaning of 28 USC § 157 and § 1334.

10. Kevin Kelly and Edel Kelly assert claims for unpaid profit distributions and sales proceeds concerning the sale of NYNM LLC to Constellation Healthcare Technologies, Inc. They also

assert claims that they are beneficiaries of an express or constructive trust by virtue of the Orders of the Supreme Court of New York, Kings County authorizing the sale of NYNM LLC to Constellation Healthcare Technologies, Inc. upon the condition that 10% of the net sales proceeds be held in escrow for their benefit.

11. Kevin Kelly and Edel Kelly consent to entry of a final order in the Actions by the bankruptcy court.

12 This Court has jurisdiction over the Actions pursuant to 28 USC § 1334.

13. Removal of the Actions to this Court is proper pursuant to 28 USC § 1452 and FBRP 9027.

14. Venue for the Actions is proper in this Court under 28 USC § 1452 because this Court is the Bankruptcy Court located in the District where the non-bankruptcy court where the Actions were formally pending were located.

15. Attached hereto as Exhibit “A” through “L” are copies of all pleadings, service of process, and Orders filed in the Actions prior to removal as follows:

Exhibit “A” - Action 1: Complaint filed by NYNM LLC

Exhibit “B” - Action 1: Answer filed by Kevin Kelly

Exhibit “C” - Action 2: Summons with Notice filed by Kevin Kelly, Complaint filed by Kevin Kelly and Edel Kelly, Amended Complaint filed by Kevin Kelly and Edel Kelly

Exhibit “D” - Action 2: Answer filed by NYNMN LLC and Elizabeth Kelly, Answer to Amended Complaint filed by NYNM LLC and Elizabeth Kelly.

Exhibit “E” - Action 1: Stipulation discontinuing Action 1 as against Auciello Law Group

Exhibit “F” - Action 1: Affirmation of Service of Complaint on Kevin Kelly and Auciello Law Group, PC

Exhibit “G” - Action 2: Affirmation of Service of Summons with Notice on NYNM LLC and Elizabeth Kelly

Exhibit “H”- Action 1: January 3, 2017 Order

Exhibit “I” - Action 1 and 2: October 20, 2017 Order

Exhibit “J” - Action 1 and 2: March 28, 2018 Order

Exhibit “K” - Action 1 and 2: April 17, 2018 Order

Exhibit “L” - Action 1 and 2: August 20, 2018 Order

Dated: September 10, 2018
Brooklyn, NY

MUCHMORE & ASSOCIATES PLLC
Counsel for Creditors Kevin Kelly
and Edel Kelly

By: /s/ Maximilian Travis.
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